

## 46 Am. Jur. 2d Judges § 119

American Jurisprudence, Second Edition | February 2022 Update

### Judges

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### IX. Disqualification to Act in Particular Case

#### B. Grounds for Disqualification

#### 3. Relationship as Grounds for Disqualification

##### a. Relationship to Parties or Persons Interested

## § 119. Relationship to one who is not a party as grounds for judge's disqualification—Relationship to witness

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  45

The canons or rules of many states provide that a judge must disqualify him- or herself if his or her spouse, or a person within the third degree of relationship to either him- or herself or his or her spouse or the spouse of such a person is, to the judge's knowledge, likely to be a material witness in the proceedings.<sup>1</sup> Such rules are embodied in the federal statute regarding the disqualification of judges,<sup>2</sup> as well as the Code of Judicial Conduct.<sup>3</sup>

### Observation:

Under the Code of Judicial Conduct, a judge is required to recuse from a case where the judge knows that a family member within the third degree of relationship is likely to be a material witness in the proceeding, but where the judge's relative is not a witness and the jury is not informed of the relative's involvement in the case, the defendant's right to a fair trial is not abridged by the judge's refusal to recuse.<sup>4</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The appearance of bias, and the probability of actual bias that would rise to a level too high to be constitutionally tolerable, dictated recusal of trial judge in capital murder case; trial judge had a longtime working relationship with victim's widow, a court employee who was not only the victim's widow but also was designated as a penalty phase witness, the judge had a social media relationship with the widow that the judge initially denied in a formal opinion, but later admitted under oath, and the judge had taken steps barred by the Code of Criminal Procedure which, if not corrected by the appellate court, would have thwarted another judge from considering recusal. [State v. Daigle](#), 241 So. 3d 999 (La. 2018).

### [END OF SUPPLEMENT]

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### Footnotes

- 1 [Ex parte Jackson](#), 508 So. 2d 235 (Ala. 1987); [Morton v. Benton Pub. Co., Inc.](#), 291 Ark. 620, 727 S.W.2d 824 (1987); [Los v. Los](#), 595 A.2d 381 (Del. 1991).
- 2 28 U.S.C.A. § 455(b)(5)(iv).  
As to interest of relatives under 28 U.S.C.A. § 455(b)(5), generally, see [Am. Jur. 2d, Federal Courts](#) §§ 101, 102.
- 3 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(2)(d), further making provision for domestic partners.
- 4 [State v. Moyer](#), 302 Kan. 892, 360 P.3d 384 (2015) (finding that a judge's failure to recuse himself from presiding over a trial for aggravated criminal sodomy and other crimes based on his father-son relationship with a law enforcement officer who participated in the defendant's arrest did not violate the defendant's due process rights, where the jury was unaware that the judge's son was involved in the defendant's case).

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